IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

CRL.A.No. 263 of 2002()

CC.292/1997 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY

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APPELLANT: APPELLANT/COMPLAINANT;

K.P. NARAYANAN, S/O. KRISHNAN,
AGED 47 YEARS, JESNA NIVAS,
P.O. MUZHAPALA, KANNUR.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS: RESPONDENTS/ACCUSED:

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1. A.K. SATHI, W/O. BHASKARAN. R.,
AGED 65 YEARS, DAYAROTH HOUSE,
KAPPILA PEEDIKA, KATTAPPURAM,
P.O. AZHIKODE SOUTH, KANNUR.

2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.T.B.RAMANI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. BASHEER, J.

CRL.A.NO.263 OF 2002

Dated this the 3rd day of December, 2007.

JUDGMENT

This appeal which is directed against the order of acquittal passed by the trial court, has been preferred by the complainant after obtaining special leave. The court below acquitted the accused holding that the complainant had not established his case under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant was that the accused had borrowed a sum of Rs.70,000/= and in discharge of the said debt, Ext.P1 cheque dated September 3, 1997 was issued. When the above cheque was presented for encashment, it was dishonoured due to insufficiency of funds in the account of the accused. The statutory notice issued by him demanding payment did not evoke any response. Hence, the complaint.

3. The complainant got himself examined as PW1 and his witness was examined as PW2. Exts.P1 to P7 were also marked on his side.

The learned Magistrate while considering the oral and documentary evidence on record, proceeded to assume that "the complainant might have advanced a loan to the son of the present accused and he might have obtained two cheques as security and on the basis of the said cheques, two cases have been filed". The above hypothesis was evidently drawn by the learned Magistrate apparently for the reason that the complainant had filed a complaint against the daughter-in-law of the accused under Section 138 of the Act alleging that she had borrowed an identical sum of Rs.70,000/= from him. The said case, it appears, had ended in acquittal.

4. The learned Magistrate has observed in the judgment that the complainant had not mentioned the date on which the money was advanced by him to the accused. But in chief examination, PW1 had categorically stated that he had advanced a sum of Rs.70,000/= to the accused in two instalments, first of which was on April 11, 1997 and the 2nd on June 23, 1997. Evidently, the learned Magistrate had not considered the evidence on record in its proper perspective. Undoubtedly, the learned Magistrate jumped into unwarranted conclusions based on assumptions and conjectures.

5. Though respondent No.1/accused had been served with notice, she has not appeared before this Court. But, I have perused the entire materials on record carefully. Having done so, I have no hesitation to hold that the view taken by the learned Magistrate cannot be sustained at all. Therefore, the order of acquittal has to be set aside and the case has to be remitted to the court below for fresh disposal.

6. Therefore, the impugned judgment in C.C.No.292/1997 on the file of the Chief Judicial Magistrate's Court, Thalassery is set a side. The court below is directed to dispose of the case afresh in accordance with law after affording an opportunity to both sides to adduce further evidence, if such a request is made. The court below shall dispose of the case as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The appeal is allowed.

A.K. BASHEER, JUDGE.

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A.K. BASHEER, J.

CRL.A.NO.263 OF 2002

JUDGMENT

3rd December, 2007.